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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 NICOLE MCCLURE,)
9) No. 3:24-cv-05088-BHS
10 Plaintiff,)
11 v.) THURSTON COUNTY AND THURSTON
12) COUNTY JAIL'S ANSWER AND
13 THURSTON COUNTY, et al.,) AFFIRMATIVE DEFENSES TO
14) PLAINTIFF'S COMPLAINT
15 Defendants.)
16)
17)

18 Defendants Thurston County and Thurston County Jail, (hereinafter, "these Defendants") by
19 and through their attorneys of record and in answer to Plaintiff's Complaint, admit, deny and allege
20 as follows:
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22 **I. ANSWER**

23 1. Answering Paragraph 1, these Defendants admit only that Nicole McClure was arrested
24 by a WSP Trooper on March 21, 2022 and booked into the Thurston County Jail. These Defendants
25 deny all other or different allegations in Paragraph 1.

2. Answering Paragraph 2, these Defendants admit jurisdiction is proper.

3. Answering Paragraph 3, these Defendants admit only that the Thurston County Jail is
located in Thurston County, and venue is proper for events that occurred at that location, and are

1 without information or knowledge sufficient to form a belief as to other allegations therein and
2 therefore deny the same.

3 4. Answering Paragraph 4, these Defendants admit only that Plaintiff filed a tort claim
4 with Thurston County in compliance with RCW 4.92, and that more than 60 days have elapsed since
5 that time, and are without information or knowledge sufficient to admit or deny the other allegations
6 therein and therefore deny the same.

7 5. Answering Paragraph 5, these Defendants are without information or knowledge
8 sufficient to form a belief as to the truth of said paragraph, and, therefore, deny the same.

9 6-18. Answering Paragraphs 6 through 18, these Defendants are without information or
10 knowledge sufficient to form a belief as to the truth of said paragraphs, and, therefore, deny the same.

11 19. Answering Paragraph 19, these Defendants admit that Nicole McClure arrived at the
12 Thurston County Jail on charges of DUI and Felony Eluding and are without information or knowledge
13 sufficient to form a belief as to the other allegations therein and therefore deny the same.

14 20. Answering Paragraph 20, these Defendants admit only that Nicole McClure was booked
15 into the Thurston County Jail on March 21, 2022 and deny all other or different allegations therein.

16 21. Answering Paragraph 21, these Defendants deny the same.

17 22. Answering Paragraph 22, these Defendants admit only that Nicole McClure was
18 transported to the ER on March 22, 2022 and are without information or knowledge sufficient to form
19 a belief as to the other allegations therein, and therefore deny the same.

20 23. Answering Paragraph 23, these Defendants are without information or knowledge
21 sufficient to form a belief as to the allegations therein and therefore deny the same.

22 24. Answering Paragraph 24, these Defendants are without information or knowledge
23 sufficient to form a belief as to the allegations therein and therefore deny the same.

1 25. Answering Paragraph 25, these Defendants are without information or knowledge
2 sufficient to form a belief as to the allegations therein and therefore deny the same.

3 26. Answering Paragraph 26, these Defendants are without information or knowledge
4 sufficient to form a belief as to the allegations therein and therefore deny the same.

5 27-28. Answering Paragraphs 27-28, these Defendants deny that Plaintiff's asserted federal
6 claims and deny that she is entitled to relief.

7 29. Answering Paragraph 29, these Defendants deny the same.

8 30. Answering Paragraph 30, these Defendants deny the same.

9 31. Answering Paragraph 31, these Defendants deny the Plaintiff is entitled to any damages
10 from Thurston County or Thurston County Jail and are without information or knowledge to form a
11 belief as to whether Plaintiff is entitled to damages against any other entity and therefore deny the
12 same.
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14 32. Paragraph 32 is the Plaintiff's request that this matter be tried before a jury and does not
15 require an answer. To the extent the paragraph requires an answer, these Defendants deny the same.

16 33. Answering Plaintiff's Prayer for Relief, these Defendants deny the same.

17 **II. AFFIRMATIVE DEFENSES**

18 1. That the Plaintiff has failed to state a claim upon which relief may be granted.

19 2. That if the Plaintiff suffered any damages, recovery therefor is barred by Plaintiff's
20 failure to mitigate said damages.

21 3. That alleged damages claimed by the Plaintiff were proximately caused by the fault of
22 the Plaintiff or third persons over whom these Defendants had no control. The Defendant specifically
23 reserves the right to identify and name any such third parties as discovery progresses.
24

25 ...

1 **III. RESERVATION OF RIGHTS**

2 These Defendants expressly reserve the right to amend this Answer, including the addition of
3 affirmative defenses warranted by investigation and discovery, and to make such amendments either
4 before or during trial, including asserting other defense theories or conforming the pleadings to the
5 proof offered at the time of trial.

6 **IV. PRAYER FOR RELIEF**

7 WHEREFORE, these Defendants pray as follows:

8 1. That Plaintiff's Complaint be dismissed with prejudice and Plaintiff takes nothing
9 thereby, that these Defendants be allowed their costs, disbursements and reasonable attorney fees
10 herein, and that the Court award these Defendants such other relief as may be appropriate.

11 2. That if the Complaint is not dismissed, that a jury determines the percentage of the total
12 fault which is attributable to every Defendant who caused Plaintiff's damages, and that the judgment
13 be entered as required by law in accordance therewith.

14 DATED this 15th day of February 2024.

15 JON TUNHEIM
16 PROSECUTING ATTORNEY

LAW, LYMAN, DANIEL, KAMERRER
& BOGDANOVICH, P.S.

17 /s/ Julie Carignan
18 JULIE CARIGNAN, WSBA #36670
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25 of Attorneys for Thurston County Defendants

/s/ John E. Justice
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of Attorneys for Thurston County Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the date indicated below I caused to be electronically filed a copy of the foregoing document with the Clerk of the Court using the CM/CEF system which will send notification of such filing to the parties listed below:

<u>Attorney for Plaintiff:</u> Anne Vankirk Joshua Joerres Falin McKenzie Dubin Law Group P.O. Box 30947 Seattle, WA 98113 joshj@dubinlawoffice.com anne@dubinlawoffice.com falin@dubinlawoffice.com	<u>Attorney for Defendant Washington State Patrol:</u> Joshua D. Orf-Rodriguez Johnna S. Craig Assistant Attorneys General Torts Division P.O. Box 40126 Olympia, WA 98504-0125 Joshua.OrfRodriguez@atg.wa.gov Johnna.Craig@atg.wa.gov
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 15th day of February 2024.

/s/ Tam Truong
Tam Truong, Legal Assistant